

RECEIVED
CENTRAL FAX CENTER

JUN 17 2009

Attorney's Docket No.: 8758P010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Murray L. Neal

Application No.: 10/788,716

Filed: February 27, 2004

For: PRIMARY FRAMING SYSTEM AND
A METHOD OF INSTALLATION

Examiner: A, Phi Dieu Tran

Group Art Unit: 3633

Confirmation No.: 6779

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

The Appellant submits the following Appeal Brief pursuant to 37 C.F.R. § 41.37(c) for consideration by the Board of Patent Appeals and Interferences. The Appellant authorizes the amount of \$270.00 to cover the cost of filing the opening brief as required by 37 C.F.R. § 1.17(f) to be charged to Deposit Account No. 02-2666.

06/18/2009 JVONG1 00000033 022666 10788716
01 FC:2402 270.00 DA

JUN 17 2009

PATENT

TABLE OF CONTENTS

	<u>Page</u>
I. REAL PARTY IN INTEREST	3
II. RELATED APPEALS AND INTERFERENCES	3
III. STATUS OF CLAIMS	3
IV. STATUS OF AMENDMENTS	3
V. SUMMARY OF THE CLAIMED SUBJECT MATTER	3
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	4
VII. ARGUMENT	5
A. Overview of the Cited References	5
1. Koike	5
2. Litchfield	5
3. Owen	6
4. Montrouil	6
B. Rejection of Claims 1, 7, and 8 under 35 U.S.C. § 102(b) based on Koike	6
C. Rejection of Claims 1, 7-9, 29, and 30 are rejected under 35 U.S.C. § 103(a) based on Litchfield and Owen	7
D. Rejection of Claims 10, 11, and 31 under 35 U.S.C. § 103(a) based on Litchfield, Owen and Montrouil	8
VIII. CLAIMS APPENDIX	10
IX. EVIDENCE APPENDIX	16
X. RELATED PROCEEDINGS APPENDIX	17

PATENT

I. REAL PARTY IN INTEREST

Murray L. Neal, the party named in the caption, transferred his rights to the subject Application through an assignment recorded on March 18, 2009 (Reel/Frame 022408/0992) in the patent application to Guardian, LLC, of Missoula, Montana. Thus, as the owner at the time the brief is being filed, Guardian, LLC is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, be directly affected by or have a bearing on the Board's decision in this Appeal.

III. STATUS OF CLAIMS

Claims 1-5, 7-20, and 29-31 are currently pending and claims 1, 7-11, and 29-31 are rejected in the Application. Claims 2-5 and 12-20 are withdrawn, and claims 6 and 21-28 are canceled. The Appellant respectfully appeals the rejections of claims 1, 7-11, and 29-31.

IV. STATUS OF AMENDMENTS

No amendments were submitted after the Final Office Action mailed on December 11, 2008.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Claim 1 recites a window framing system, comprising: a plurality of pieces that are structural components of a primary frame, wherein the pieces include a sub-frame and a base (*See* pg. 5, lines 6-8; FIG. 2, elements 204, 206), the sub-frame having a corner

PATENT

to receive a glazing unit (*See* pg. 5, lines 11-13; FIG. 2, element 106), the sub-frame has an elongated portion with an L-shaped cross-section that defines said corner, the L-shaped cross-section having a) a first segment in which there are a first plurality of holes through which the sub-frame is to be secured to one of a head, jamb, and sill at a job site, and b) a second segment perpendicular to the first segment with a cavity having an enclosed cross-section formed therein that occupies a substantial portion of the second segment and runs lengthwise through a substantial part of the elongated portion (*See* pg. 6, lines 9-25; FIG. 3, elements 312, 314, 316 and 318), the base to be assembled with the sub-frame so as to secure the glazing unit in the corner (*See* pg. 5, lines 11-13; FIG. 2, elements 106, 204, 206).

Claim 29 recites a window framing system, comprising: a plurality of pieces that are structural components of a primary frame, wherein the pieces include a sub-frame and a base (*See* pg. 5, lines 6-8; FIG. 2, elements 204, 206), the sub-frame having a corner to receive a glazing unit (*See* pg. 5, lines 11-13; FIG. 2, element 106), the sub-frame has an elongated portion with an L-shaped cross-section that defines said corner, the L-shaped cross-section having a) a first segment in which there are a first plurality of holes through which the sub-frame is to be secured to one of a head, jamb, and sill at a job site, and b) a second segment perpendicular to the first segment, the first segment and the second segment integrally formed with one another (*See* pg. 6, lines 9-12; FIG. 3, element 204), the base to be assembled with the sub-frame so as to secure the glazing unit in the corner (*See* pg. 17, lines 20-26; FIG. 3, element 204).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 7, and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Koike *et al.* (U.S. 5,746,032) ("Koike").

Claims 1, 7-9, 29, and 30 are rejected under 35 U.S.C. § 103(a) as being

PATENT

unpatentable over Litchfield *et al.* (U.S. 4,525,966) ("Litchfield"), in view of Owen (U.S. 3,016,993) ("Owen").

Claim 10, 11, and 31 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Litchfield, in view of Owen, and further in view of Montrouil (U.S. 4,115,964) ("Montrouil").

All of the claims do not stand or fall together. The basis for the separate patentability of the claims is set forth below.

VII. ARGUMENT

A. Overview of the Cited References

1. Koike

Koike is directed to a sash frame for a window installed in an opening of a building such that rain water outside the building does not seep through the edges of the frame and into the screw holes in the frame (*See Koike*, col. 1, ll. 39-41 and 58-67). The rain water is blocked by an additional transverse member attached to a lower edge portion of the frame (*See Id.* at Figure 2, element 8).

2. Litchfield

Litchfield is directed to window glazing, *i.e.*, glazing putty or other compound conventionally applied to the outside of a window so that the pane or window unit cannot be readily removed (*See Litchfield*, col. 1, ll. 6-10). Litchfield discloses glazing beads, *e.g.*, of a plastic material, disposed at the outside face of the window and glazing wedges, *e.g.*, also of a plastic material, disposed between the glass and the frame (*See Id.* at Figure 1, element 11). This configuration reinforces the security of the window by protecting against unauthorized entry when the outer glazing is removed and re-glazed (*See Id.* at col. 1, ll. 15-18).

PATENT

3. Owen

Owen is directed to a metal framing unit for the opening of a building, *e.g.*, a window opening (*See* Owen, col. 2, ll. 59-61). The framing unit holds a glass panel for the window.

4. Montrouil

Montrouil is directed to a window secured by glazing or rotatable rod members to prevent an intruder from breaking the window and frame and entering a building. The frame is pre-installed within the opening of the building and the pre-glazed window is installed in the frame at the job site (*See* Montrouil, col. 2, ll. 12-32).

B. Rejection of Claims 1, 7, and 8 under 35 U.S.C. § 102(b) based on Koike

Claims 1, 7, and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Koike *et al.* (U.S. 5,746,032) ("Koike").

1. Independent claim 1

Koike does not disclose each and every element of the claim limitations alleged by the Examiner. Independent claim 1 recites, among other elements:

... a second segment perpendicular to the first segment with a cavity having an *enclosed cross-section formed therein that occupies a substantial portion of the second segment* and runs lengthwise through a substantial part of the elongated portion ...

(emphasis added). The Examiner states that the recited cavity is disclosed by Koike at "figure 2, the space underneath part 20 is enclosed by the sub-frame" (*See* Final Office Action, pg. 2).

PATENT

However, the claim does not recite that the cavity is "enclosed by the sub-frame" as asserted by the Examiner, but rather that the cavity is enclosed "therein," *i.e.*, the cavity is enclosed **within the second segment**. In other words, the claim requires that the cavity is enclosed within the second segment, which in turn must be perpendicular to the first segment. Seeing as the cavity of Koike's Figure 2 does not have an enclosed cross-section within the "the second segment," but rather is enclosed by **both** elements 8 and 22 (arguably corresponding to the first **and** second segment), Koike does not anticipate claim 1.

The above arguments apply to claims 7 and 8 by virtue of their dependencies on independent claim 1. The Appellant respectfully requests reversal of these rejections.

C. Rejection of Claims 1, 7-9, 29, and 30 are rejected under 35 U.S.C. § 103(a) based on Litchfield and Owen

Claims 1, 7-9, 29, and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Litchfield *et al.* (U.S. 4,525,966) ("Litchfield"), in view of Owen (U.S. 3,016,993) ("Owen").

1. Independent Claims 1 and 29

The cited references do not teach or suggest all the limitations of independent claims 1 and 29. Independent claims 1 and 29 recite "a first segment in which there are a first plurality of holes through which the sub-frame is to be secured to **one of a head, jamb, and sill at a job site**" (emphasis added). Litchfield and Owen do not teach or suggest this aspect.

The Examiner contends that Litchfield teaches all the limitations of the independent claims except for the above aspect. The Examiner concedes that Litchfield does not disclose this aspect, but contends that Owen discloses this aspect with "[element] 32, left and right, figure 1" (*See* Final Office Action, pg. 4). However, element 32, which corresponds to two screws through a frame piece, is not secured to

PATENT

one of a head, jamb, and sill at a job site. Rather, these screws appear to secure the sub-frame (element 12) to element 35, which in turn is the piece that may be secured to the building (*See Owen*, col. 2, ll. 53-55 and 59-61). Therefore, the screws identified by the Examiner do not secure a sub-frame to one of a head, jamb, and sill at a job site, but instead to a frame, and it is this frame that is then secured to an opening in the building.

In view of the above, the combination of Litchfield and Owen do not teach or suggest all the limitations of independent claims 1 and 29. The above arguments apply to claims 7-9 and 30 by virtue of their dependencies on independent claims 1 and 29. The Appellant respectfully requests reversal of these rejections.

D. Rejection of Claims 10, 11, and 31 under 35 U.S.C. § 103(a) based on Litchfield, Owen and Montrouil

Claim 10, 11, and 31 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Litchfield, in view of Owen, and further in view of Montrouil (U.S. 4,115,964) ("Montrouil"). The above arguments apply to claims 7-9 and 30 by virtue of their dependencies on independent claims 1 and 29. The Examiner does not contend that Montrouil cures the aforementioned deficiencies in connection with independent claims 1 and 29. The Appellant respectfully requests reversal of these rejections.

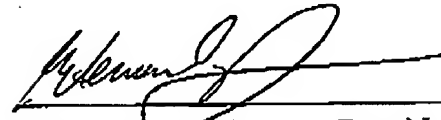
In view of the foregoing, the Appellant respectfully requests the Board overturn all outstanding rejections.

PATENT

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

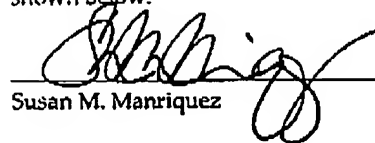
Dated: 17 June 2009


Farzad E. Annini Reg. No. 42,261

1279 Oakmead Parkway
Sunnyvale, California 94085-4040
Telephone (310) 207-3800
Facsimile (310) 820-5270

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted to the United States Patent and Trademark Office electronically via EFS Web on the date shown below.


Susan M. Manriquez 6/17/09 Date

PATENT

VIII. CLAIMS APPENDIX

1. (Previously Presented) A window framing system, comprising:

a plurality of pieces that are structural components of a primary frame, wherein

the pieces include a sub-frame and a base,

the sub-frame having a corner to receive a glazing unit,

the sub-frame has an elongated portion with an L-shaped cross-section that
defines said corner, the L-shaped cross-section having a) a first segment in which there
are a first plurality of holes through which the sub-frame is to be secured to one of a
head, jamb, and sill at a job site, and b) a second segment perpendicular to the first
segment with a cavity having an enclosed cross-section formed therein that occupies a
substantial portion of the second segment and runs lengthwise through a substantial
part of the elongated portion,

the base to be assembled with the sub-frame so as to secure the glazing unit in
the corner.
2. (Withdrawn) The system of claim 1 wherein the pieces further include a sub-
frame, a first base and a second base of a mullion,

the mullion sub-frame having respective corners to receive first and second
glazing units, respectively,

PATENT

the first and second bases to be assembled with the mullion sub-frame so as to secure the first and second glazing units in the respective corners.

3. (Withdrawn) The system of claim 2 wherein the mullion is to be horizontally oriented as assembled.

4. (Withdrawn) The system of claim 2 wherein the mullion is to be vertically oriented as assembled.

5. (Withdrawn) The system of claim 2 wherein the first and second mullion bases are shorter, in height, than said base.

6. (Canceled)

7. (Previously Presented) The system of claim 1 wherein the sub-frame has a plurality of screw holes formed lengthwise in the first segment, each of the screw holes communicates with an opening that allows material which has been cut, due to a screw being driven in the hole, to exit so as not to fill up the hole.

8. (Previously Presented) The system of claim 1 wherein the base has an elongated portion with an L-shaped cross-section whose first segment lies against the glazing in said corner and whose second segment is to be secured to the sub-frame, the first and second segments lead into a fillet having a chamfer at its corner.

PATENT

9. (Previously Presented) The system of claim 7, wherein the first segment of the sub-frame has a second plurality of holes formed laterally in the first segment and through which the sub-frame is to be secured to one of said head, jamb, and sill at the job site by means of a plurality of anchor fasteners.
10. (Previously Presented) The system of claim 9, wherein some of the second plurality of holes line up directly behind the glazing unit that is installed in the corner, and some others of the second plurality of holes line up directly behind corresponding holes in the base through which anchor fasteners are to be passed for securing the sub-frame to one of said head, jamb, and sill at the job site.
11. (Original) The system of claim 1 wherein each of the sub-frame and the base is essentially made of a continuous piece of extruded aluminum.
12. (Withdrawn) The system of claim 1 wherein the first segment of the sub-frame is of extruded aluminum with a thermal break formed therein.
13. (Withdrawn) The system of claim 2 wherein the mullion sub-frame has an elongated portion that has a substantially T-shaped cross-section in which the respective corners are on opposite sides of a stem.
14. (Withdrawn) The system of claim 13 wherein the stem has a cavity that runs lengthwise along a substantial part of the elongated portion,

PATENT

the system further comprising a reinforcing strip sized to be inserted into the stem cavity.

15. (Withdrawn) The system of claim 13 wherein the stem has (i) a cavity therein that runs lengthwise along a substantial part of the elongated portion, and (ii) a pair of slots formed in its outside surface,

the system further comprising a notched reinforcing strip,

wherein the pair of slots are positioned relative to the cavity and are sized relative to the strip so that the strip can be passed through the pair of slots and a notched portion of the strip can be locked into position in the cavity between the pair of slots.

16. (Withdrawn) The system of claim 13 wherein the mullion sub-frame has a cavity that runs lengthwise through a hat of the T-shaped cross-section.

17. (Withdrawn) The system of claim 16 wherein the sub-frame has a pair of slots on opposite ends of the hat,

the system further comprising:

a block sized to be inserted into the cavity through the pair of slots and being long enough to extend beyond both said ends of the hat when inserted; and

an intermediate mullion piece that is sized to receive a portion of the block therein.

PATENT

18. (Withdrawn) A window framing system, comprising:

a shear block; and

a plurality of pieces cut from one or more extruded metal beams to form a frame,

wherein the pieces include a perimeter sub-frame and a base,

the perimeter sub-frame having an elongated portion with a substantially L-shaped cross-section whose (i) inside corner is to receive a glazing unit, (ii) first segment is to be secured to one of a head, jamb, and sill, and (iii) second segment has a cavity that runs lengthwise through a substantial part of the elongated portion, the sub-frame having a slot positioned relative to the cavity and sized so that one end of the shear block can be inserted through the slot and into the cavity, and

the base to be assembled with the sub-frame to secure the glazing unit in the corner.

19. (Withdrawn) The system of claim 18 wherein the pieces are extruded aluminum pieces.

20. (Withdrawn) The system of claim 18 further comprising a mullion sub-frame having a cavity in which another end of the shear block is sleeved.

21-28. (Cancelled)

29. (Previously Presented) A window framing system, comprising:

PATENT

a plurality of pieces that are structural components of a primary frame, wherein the pieces include a sub-frame and a base,

the sub-frame having a corner to receive a glazing unit,

the sub-frame has an elongated portion with an L-shaped cross-section that defines said corner, the L-shaped cross-section having a) a first segment in which there are a first plurality of holes through which the sub-frame is to be secured to one of a head, jamb, and sill at a job site, and b) a second segment perpendicular to the first segment,

the first segment and the second segment integrally formed with one another,

the base to be assembled with the sub-frame so as to secure the glazing unit in the corner.

30. (Previously Presented) The system of claim 29, wherein the first segment includes a cavity having an enclosed cross-section formed therein that occupies a substantial portion of the second segment.

31. (Previously Presented) The system of claim 29, wherein each of the sub-frame and the base is essentially made of a continuous piece of extruded aluminum.

PATENT

IX. EVIDENCE APPENDIX

No evidence is submitted with this appeal.

PATENT

X. RELATED PROCEEDINGS APPENDIX

No related proceedings exist.